IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8877 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARWAD KANTIBHAI DAHYABHAI

Versus

COLLECTOR

Appearance:

MR MITUL K SHELAT for Petitioners

MS HARSHA DEWANI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 10/11/2000

ORAL JUDGEMENT

By means of filing this petition under Article 227 of the Constitution, the petitioners have prayed to quash and set aside order dated March 5, 1991 passed by the Additional Chief Secretary, Revenue Department (Appeals), Government of Gujarat, Ahmedabad, by which

revision application submitted by the petitioners seeking instalments for payment of occupancy price fixed by the Collector vide order dated April 25, 1984 for allotment of Block No.132 of village Kau, Taluka : Modasa, District : Sabarkantha, is rejected and order dated April 25, 1984 passed by the Collector, Sabarkantha granting land to the petitioners, is cancelled.

2. Survey No.56 of village Kau, Taluka : Modasa admeasuring 19 Acres & 11 Gunthas was allotted by the Prant Officer, Modasa to Motiji Gobarji Thakarda vide order dated July 27, 1936 on condition of payment of 10 times assessment of the land. The land was granted to Motiji on new tenure basis. Motiji expired on March 14, 1957 and, therefore, the land was mutated in the names of Nathaji Motiji, Nanaji Motiji and Bijalbhai Motiji, who were his heirs and legal representatives. On consolidation of holdings in village Kau, survey no.56 was designated as Block No.132 and necessary entries were mutated in the revenue record. The heirs and legal representatives of deceased Motiji Thakarda were not residing at village Kau and it was difficult for them to cultivate the land situated at village Kau. Moreover, earlier the land in question was mortgaged by the owners of the land to the petitioners and the petitioners were in occupation of the same since the year 1958. Under the circumstances, the owners were inclined to transfer the land to the petitioners and had applied to the competent authority for permission to transfer the land to the petitioners, but before permission could be granted, the owners of the land in question sold the land to the petitioners by a deed dated April 20, 1960 for a sum of Rs.3,000/-. It was noticed by the competent authority that the petitioners were in unauthorised occupation of the land in question. Therefore, appropriate proceedings were initiated by the Deputy Collector, Modasa, who by his order dated April 21, 1970 imposed penalty on the petitioners and forfeited the land to the Government. Feeling aggrieved by the said order, the petitioners preferred an appeal before the Collector, Sabarkantha. The Collector, Sabarkantha was of the opinion that no illegality was committed by the Assistant Collector while passing order under section 61 of the Bombay Land Revenue Code, but found that the economic condition of the petitioners was not sound and as they belong to backward class, interest of justice would be served if the land in question was granted to them by charging normal market rate from them. Therefore, the Collector by his order dated April 25, 1984 granted land to the petitioners on certain conditions stipulated therein and called upon them to pay market value of the land at the rate of Rs.

1000/- per Acre within three months from the date of the order. The petitioners were of the view that the market value assessed by the Collector was excessive and, therefore, they challenged that part of the order of the Collector before the State Government by filing revision application. The State Government was of the opinion that the price of the land fixed by the Collector was proper and no ground was made out to interfere with the same. In view of that conclusion,the State Government rejected the revision application filed by the petitioner vide order dated August 28, 1985. After rejection of revision application by the State Government, the petitioners made another application to the Collector requesting him to grant instalments so that occupancy price fixed vide order dated April 25, 1984 could be paid by them. The Collector rejected this prayer by an order dated June 30, 1990,which is produced at Annexure-C to the petition. Therefore, the petitioners challenged the said order before the State Government by filing revision application. The Additional Chief Secretary, Revenue Department (Appeals) was of the view that no procedure as contemplated by section 61 of the Bombay Land Revenue Code was followed by the Collector, Sabarkantha before granting forfeited land to the petitioners and, therefore, respondent no.2 not only rejected the prayer made by the petitioners for grant of instalments to pay the occupancy price, but also held that the grant itself was illegal by order dated March 5, 1991, which has given rise to present petition.

3. According to the petitioners, the Collector has powers to grant land forfeited under the provisions of the Code and, therefore, the order of the State Government is liable to be set aside. The petitioners have averred that grant of land made in favour of the petitioners could not have been set aside after a period of six years, more particularly when the said grant was not found to be illegal in the earlier proceedings by the State Government itself. Under the circumstances, the petitioners have filed present petition and claimed reliefs to which reference is made earlier.

4. Mr. R.D.Pandor, Deputy Secretary, Revenue Department (Appeals), Ahmedabad has filed reply affidavit controverting the averments made in the petition. In the reply, it is inter-alia contended that there is no provisions under the Bombay Land Revenue Code to regularize the encroachment of land forfeited and, therefore, the reliefs claimed in the petition should not be granted. It is also averred therein that the land was granted to the original owners on new tenure basis and as

they had transferred the land to the petitioners without obtaining prior permission of the State Government, the petition should be dismissed.

5. Mr. M.K.Shelat, learned counsel for the petitioners submitted that under section 61 of the Bombay Land Revenue Code, 1879 read with Rule 120 of the Gujarat Land Revenue Rules, 1972, the Collector has power to grant forfeited land on inalienable tenure and, therefore, grant of land to the petitioners could not have been set aside by the respondent no.2 on the ground that procedure contemplated by section 61 of the Act was not followed before effecting grant in favour of the petitioners. According to the learned counsel, grant of land was made by the Collector vide order dated April 25, 1984 and the same should not have been set aside after a lapse of about six years. What was highlighted was that while dealing with the question whether occupancy price fixed by the Collector vide order dated April 25, 1984 was proper or not, the grant was found to be valid by the State Government itself and, therefore, grant should not have been set aside while considering the question whether the petitioners were entitled to instalments so as to enable them to pay occupancy price. The learned counsel for the petitioners submitted that the order passed by the respondent no.2 is quite contrary to the scheme contemplated by the Bombay Land Revenue Code and, therefore, the petition should be accepted.

6. Ms. Harsha Dewani, learned counsel for the respondents submitted that there is no provisions under the Bombay Land Revenue Code or Rules to regularize the land forfeited under section 61 of the Code and, therefore, the State Government was justified in cancelling the allotment of land made to the petitioners. It was emphasized that the decision of the Collector to grant land to the petitioners was against the policy of the State Government to regularize unauthorised encroachment by payment of price of occupancy rights and, therefore, the order of the Collector granting land to the petitioners was rightly set aside by the State Government. According to the learned counsel for the respondents, the original owners of land could not have sold the land to the petitioners without prior permission of the State Government and as condition precedent before effecting sale of the land was not complied with, the State Government was justified in setting aside the grant of land to the petitioners. What was claimed was that a just order has been passed by the State Government and, therefore, the petition should be dismissed.

7. I have heard the learned counsel for the parties and considered the documents forming part of the petition. It is true that the original owners had not obtained prior permission of the State Government before transferring the land to the petitioners. However, the record of the case shows that as prior permission of the competent authority was not obtained before transferring the land, proceedings were initiated under section 61 of the Code and the Deputy Collector had imposed penalty as well as ordered forfeiture of the land to the Government. That order was challenged by the petitioners before the Collector and the Collector having found that the petitioners were in possession of the land in question since long and were not able to pay penalty, had decided to grant land to the petitioners by calling upon them to pay market rate of the land. Accordingly, he had by an order dated April 25, 1984 granted land to the petitioners on certain conditions stipulated therein and called upon the petitioners to pay price of the land at the rate of Rs.1000/- per Acre within three months from the date of the order. As observed earlier, that order was made subject matter of challenge in revision application before State Government and the State Government had upheld the same, but not held that the grant of land to the petitioners was illegal in any manner. As the petitioners were not in a position to pay the price fixed by the Collector immediately in one instalment, they had made an application to the Collector with a request to him to grant instalments which was rejected by the Collector and the State Government was hearing revision application against the said order. Section 61 of the Bombay Land Revenue Code , inter-alia, provides that "Forfeitures under this section shall be adjudged by the Collector, and any property so forfeited shall be disposed of as the Collector may direct and the cost of the removal of any encroachment under this section shall be recoverable as an arrear of land revenue." Therefore, this provision makes it abundantly clear that the forfeited land can be disposed of by the Collector as he deems proper having regard to the facts of the case. Moreover, Rule 120 of the Gujarat Land Revenue Rules, 1972 provides that where the Collector thinks it advisable that the holding of a defaulter should, after forfeiture, be either restored to the defaulter or given out with or without any occupancy price to any other person, subject to the condition that he shall not transfer in any way to another person without the previous sanction in writing of the Collector, the Collector, after having declared such holding to be forfeited to the State Government, may, without having resort to any of the other means provided

in the Code for the recovery of an arrear of land revenue, restore or give it out, as the case may be, accordingly, and shall take an agreement in Form T.. It may be stated that Rule 120 of the Gujarat Land Revenue Rules, 1972 forms part of Chapter- XVII which deals with disposal of the forfeited land. A bare reading of the above quoted rule makes it manifest that the Collector has power to restore the land to any other person subject to the condition that he would not transfer it in any manner to another person without previous sanction in writing of the Collector. Under the circumstances, it is not correct to plead that there is no provision under the Code which authorizes restoration of land to the person who is found to be in unauthorized occupation of the same, if the land is ordered to be forfeited to the State Government under section 61 of the Code. Under section 61 of the Code, competent authority is empowered to impose penalty as contemplated therein. Section 73-B of the Code provides for payment of premium for sanctioning transfer of occupancy. It is not the case of the respondents that the occupancy price fixed by the Collector while granting land to the petitioners is not in consonance with the scheme of imposition of penalty as contemplated by section 61 of the Code, or is less than the premium which could have been charged under section 73-B of the Code while sanctioning transfer of occupancy. In view of the provisions of Section 61 of the Code read with Rule 120 of the Rules, I am of the opinion that the Collector had power to grant land to the petitioners and that order could not have been regarded as having been passed without jurisdiction. The impugned order is, therefore, liable to be set aside.

For the foregoing reasons, the petition succeeds. The order dated March 5, 1991 passed by the respondent no.2 cancelling allotment of land to the petitioners made by the Collector vide order dated April 25, 1984, is set aside and quashed. The order dated April 25, 1984 passed by the Collector, District : Sabarkantha at Himatnagar granting land in question to the petitioners is restored. The petitioners are directed to pay the amount fixed by order dated April 25, 1984 within two months from today, with interest at the rate of 10% per annum from the date of the said order till the date of payment. If the amount as directed by this order is not paid by the petitioners, the Collector, District : Sabarkantha at Himatnagar would be at liberty to pass appropriate orders in respect of land in question in accordance with law. Rule is made absolute, with no order as to costs.

(J.M.Panchal,J.)

(patel)